IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Letters Patent Appeal (Lodg.) No.123 of 2007
In
Notice of Motion No.694 of 2006
In
Arbitration Petition No.8 of 1999

Union of India. .. Appellant (Org.Respondent)

Vs.

M/s.Grace Engineers. .. Respondent (Org.Petitioner)

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Shri T.J.Pandian for the Appellant.

Shri S.U.Kamdar i/b V.L.Punjwani for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ

DATED : 28TH FEBRUARY, 2007

P.C.

1. On the delay being condoned, the appeal has been taken on board by consent and has been heard.

2. On 15th February, 1999, a Sole Arbitrator was appointed by an order passed by this Court. Consequent on the inability expressed by the Arbitrator to function as such, a Motion was taken out by the General Manager of the Central Railway seeking to appoint an Arbitrator in place of the Hon’ble Shri

Justice S.C.Pratap, a former Judge of this Court, who was earlier appointed as the Sole Arbitrator. The Learned Single Judge by the impugned order has held that since the order dated 15th February, 1999 appointing a retired Judge of this Court has become final between the parties, there is no question of now permitting the General Manager of the Central Railway to appoint an Arbitral Tribunal. The order of the Learned Single Judge is questioned in this appeal. The proceedings are governed by the Arbitration Act, 1940.

3. Section 39 of the Act provided that an appeal shall lie from six categories of orders spelt out in clauses (i) to (vi) of Sub-section (1) (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order. This provision came up for interpretation before the Supreme Court in the matter of **Union of India v. Mohindra Supply Company,** reported in AIR 1962 SC 256. In respect of the jurisdiction under the Letters Patent, the Court observed that since Arbitration Act was a consolidating and amending Act relating to arbitration it must be construed without any assumption that it was not intended to alter the law relating to appeals. The Supreme Court held that in

view of the provision of Section 39 debarring any second appeal from an order passed in appeal under sub-section (1) the conclusion was inevitable that it was so done with a view to restrict the right of appeal within strict limits defined by Section 39. Subsequently, in the judgment in **State of West Bengal v. M/s.Gourangalal Chatterjee,** reported in (1993)3 SCC 1, the Supreme Court, while referring to the earlier judgment, held that maintainability of an appeal under the Letters Patent stood concluded by the earlier decision.

4. The order passed by the Learned Single Judge is clearly referable to the provisions of Section 12(2)(a) of the Arbitration Act, 1940. Such an order is not appealable under Section 39(1) of the Arbitration Act. That being the position, in view of the law laid down by the Supreme Court, an appeal under the provisions of the Letters Patent is not maintainable. The Appeal will have to be dismissed on this ground alone. The appeal is consequently dismissed.

(R.M.S.KHANDEPARKAR, J)

(DR.D.Y.CHANDRACHUD, J)